

Toto, we are not in Kansas anymore

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The massive consequences of the Covid-19 pandemic are felt throughout the world, not the least in our daily work as scholars and practitioners. While the effect of the pandemic upon the political, legal, and economic systems have been widely debated also on this blog (see [here](#), [here](#), [here](#)), the last months have also brought about one of the most rapid and encompassing structural transformations in both academia and legal practice. Reflections on its consequences upon academia were so far overshadowed by more imminent concerns such as the [reopening of campuses](#), [student mobility](#), and [mass layoffs](#) in higher education. Yet, many of the changes brought about by the pandemic are here to stay on a long-term basis. Hence, this post attempts a first sketch of a critical reflection by discussing some of the potentials and challenges posed by the “Zoomification” of our working lives.

Zoomification: The Reliance on Digital Technology to Sustain Essential Functions

In the face of an unprecedented pandemic, the existence of digital technology, in particular video communication software, has spared us greater turmoil. Many readers of this blog, in particular academics and (legal) practitioners, were able to continue to carry out their daily tasks almost unfazed by relying on communication tools such as Zoom, Microsoft Teams, Skype etc. Certainly, this Zoomification is not exclusive to the academic work culture and equally perverts the public and the private sphere, which might even result in increased mental exhaustion ([“Zoom fatigue”](#)).

The pressure to quickly find creative and accessible solutions to sustain essential functions has opened up a window of opportunity to rethink fundamental beliefs, for instance about the need for in-person meetings. This total dependence on digital technology has fast-tracked institutional changes. Institutions which were long averse to integrate new methods and open up to digital technology just underwent an unprecedented modernization whose short and long-term consequence often cannot be foreseen.

Against this background, I want to highlight in particular three problematic areas for legal scholars: the use of video technology in judicial procedures, the idea of Zoom as the great equalizer in academia, and the corporate responsibility of Zoom, in particular concerning human rights issues.

Trial by Zoom

All over the world, video technology has [found its way into the courtroom](#). This holds true for lower as well as the highest courts. For instance, on May 18, the [first](#)

[nationwide virtual jury trial](#) took place in Texas, while the [Indian Supreme Court](#) had already begun to hear all its cases on the app Vidyo from March 23 onwards. This often requires changes in the Rules of Procedure, such as for the International Court of Justice, which had to [amend](#) Articles 59 and 94 of its Rules to conduct its [first public hearing via video link](#) on June 30.

There is mixed evidence whether the use of video technology impacts the judicial process. Proponents of the digitalization emphasize that online hearings might make judicial proceedings more transparent, efficient, and accessible, and are already regularly practiced, for instance in the use of video depositions. Others highlight that the Zoomification of litigation could have a [dehumanizing effect](#), which was also highlighted by the [daughter of the litigant](#) in the first trial conducted entirely by Skype in England:

“I’d like the judge and lawyers to know that this hearing was not about bigging yourselves up because you did the first Skype trial. This is about my dad. I’m left wondering whether I should have waited and insisted on a face-to-face hearing. It just felt like a second-rate hearing. (...) I wanted my dad to have his day in court – not in someone’s front room. (...) I wanted to make them hear the truth, but I was looking at a computer screen.”

Concerns of bias and lack of personal connections increase for proceedings which could have a final effect on an individual’s life, such as deportation, or, in the most extreme, cases involving the death penalty. The latter attracted attention when a Malaysian man convicted of drug-trafficking offences was [sentenced to death via Zoom](#) call in May.

Zoom as the Great Equalizer

A second, also related concern is the idea of video technology as the great equalizer. By switching most communal activities in academia online, we can open up conferences, classes, and meetings, make them accessible to students and scholars who face [financial](#) or [visa](#) barriers. This also significantly decreases the [massive carbon footprint of academic travel](#), in particular [international conferences](#). So, yes, moving to hybrid, or fully virtual events is a welcoming and necessary development and the obvious benefits during the pandemic has convinced even the most technology-critical person.

However, the improved accessibility should not cloud the reality of access to virtual spaces, which is reliant on [access to a high-speed, broadband internet connection](#). While there is a growing recognition of internet access as a human rights (see most recently [here](#) and [here](#)), even in the Global North a full-fibre broadband connection is often unavailable, in particular in [rural areas](#). For students and scholars in [countries that do not have access to this digital infrastructure](#), the inability to travel during the pandemic further impedes their participation. This puts them at a significant disadvantage, such as most recently witnessed in the virtual interviews for the ICC Prosecutor by the Assembly of States Parties, when Susan Okalany, the only female and African-based short-listed candidate, was [unable to participate equally](#) due to

a failing internet connection. While analog conferences, in the best case, provided for travel grants, enabling access to critical infrastructure [cannot be easily remedied](#). Similarly, shifting to virtual formats could have discriminatory effects on people lacking the ability or the skills to participate fully. Hence, we should be critical of viewing Zoom as the great equalizer and be mindful how we contribute to the rising [digital inequality](#).

Zoom and Corporate Responsibility

Among several available video technology providers, the US-American [Zoom Video Communications, Inc.](#) became most closely connected to the current pandemic. Its meteoric rise in popularity – from 10 million daily users in December 2019 to [over 200 million in April 2020](#) – made it an indispensable fixture of pandemic life. It rapidly outshined its competitors, became introduced to our daily vocabulary and now [labels itself](#) as “the leader in modern enterprise video communications.” One of its main slogans is “We deliver happiness”, however, there are doubts whether Zoom takes its corporate responsibility seriously, in particular concerning digital privacy rights and digital freedom.

Zoom’s problematic data privacy practices came under scrutiny already in March, [ranging](#) from a lack of encryption to the sharing of web analytics data with third parties without consent or a data-mining feature. In April, Zoom announced to tackle those issues and many problematic features have been resolved. Doubts emerged again after the CJEU declared the EU-US privacy shield invalid in its “[Schrems II](#)” decision on July 16, but so far it seems Zoom is not affected due to the use of Standard Contractual Clauses in its [Global Data Processing Addendum](#).

More problematically, in June, Zoom [officially acknowledged](#) that it had blocked the accounts of three users, which had hosted public Zoom meetings in remembrance of the anniversary of the Tiananmen Square protests on June 4. They did so after „[t]he Chinese government informed us that this activity is illegal in China and demanded that Zoom terminate the meetings and host accounts.” Until now, Zoom has not specified which “local laws” the meetings would have violated. The [three accounts](#) in question belonged to Zhou Fenguso and Wang Dang, both former student leaders at the Tiananmen Square protests and now residing in the US, and Hong Kong politician Lee Cheuk Yan. Zoom points out that it decided not to block a fourth meeting “because it did not have any participants from mainland China”.

While Zoom affirms that it will not “allow requests from the Chinese government to impact anyone outside of mainland China”, it plans to develop the tools to limit user activity based on their geographical location. By adhering to those demands, Zoom might be able to continue operating in China beyond the Great Firewall, but it also becomes a tool for an authoritarian government in its mission to restrict [freedom of speech](#). Hence, current legal discussions, for instance on the persecution of the Uyghur people or the new national security law in Hong Kong, will only take place in the absence of the most affected. Of course, this problem is not unique to Zoom, but it gives the impression that Zoom attempts to side-track human rights concerns

by highlight generic buzzwords such as “transparency” and “sustainability” in its operations.

There is no alternative

Just like [Dorothy](#) in the classic ‘The Wizard of Oz’, we are finding ourselves in a new, completely transformed environment. But, [over the rainbow](#)? Not really. Naturally, during the raging worldwide pandemic, there is no alternative to using video technology, and the practicability and reliability of Zoom in contrast to its competitors remains unmatched. However, we should not be naïve to assume that digital technology is neutral, and be mindful on the long-term impact of our current choices.

